

APPEAL NO. 041385
FILED JULY 20, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 3, 2004. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury; that the date of the claimed injury is _____; that the claimant timely reported her claimed injury; and that she did not have disability because she did not sustain a compensable injury. In her appeal, the claimant argues that the injury and disability determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) argues that the claimant's appeal is untimely. In the alternative, the carrier urges affirmance. The carrier did not appeal the date of injury and timely notice determinations and those determinations have, therefore, become final. Section 410.169.

DECISION

Affirmed.

Initially, we consider the carrier's contention that the claimant's appeal is untimely. Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Commission records indicate that the hearing officer's decision was mailed to the claimant on May 14, 2004. In her appeal, the claimant acknowledged receipt of the hearing officer's decision on May 18, 2004. Thus, in accordance with amended Section 410.202, the appeal needed to be mailed no later than June 9, 2004, and received no later than June 16, 2004. The claimant's appeal was mailed to the Commission on June 8, 2004, and received on June 14, 2004; thus, the appeal is timely.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury. The claimant had the burden of proof on that issue. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The injury issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n. v. Campos, 666 S.W.2d 286 (Tex. App.-

Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In this instance, the hearing officer determined that the evidence did not establish that the claimant sustained a compensable injury. Specifically, the hearing officer was not persuaded that the claimant sustained her burden of proving the causal connection between her work activities and the infection in her right middle finger. The hearing officer was acting within his province as the fact finder in so finding. Nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse the injury determination on appeal. Pool, *supra*; Cain, *supra*.

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6660 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Veronica L. Ruberto
Appeals Judge